

City Of Durham Industrial Pretreatment Program Enforcement Response Plan (ERP)

1. Introduction

It is the responsibility of The City of Durham to enforce all applicable Federal, State, and local pretreatment regulations. These regulations are outlined in Federal Regulation 40 CFR 403 and State Regulation 15A NCAC 2H .0900, and the local Sewer Use Ordinance (SUO). This Enforcement Response Plan (ERP) has been established as an element of the Publically Owned Treatment Works' (POTW's) pretreatment program. The purpose of the ERP is to provide for fair and equitable treatment of all Users for anticipated enforcement situations. In general, enforcement actions will be taken in accordance with this Enforcement Response Plan. However, the enforcement actions available are not exclusive as discussed in the Sewer Use Ordinance Section 70-345. Therefore, any combination of the enforcement actions can be taken against a noncompliant user.

The Enforcement Response Plan is a statement of general policy that the City of Durham Department of Water Management will follow the majority of the time in enforcing its pretreatment program. It is not a regulation, or statute and the Director of the Department of Water Management has the authority to deviate from the policy or to amend the policy at any time in order to more effectively implement the requirements of the Federal pretreatment regulations, the City of Durham local pretreatment program or the City of Durham SUO. Any amendment, however, is subject to approval by the North Carolina Division of Water Quality's Pretreatment, Emergency Response, and Collections System Unit.

2. Enforcement Actions Available to the City

The Director of Water Management is empowered through North Carolina General Statute (NCGS) 143-215.6A and the City of Durham's SUO to take a wide variety of enforcement actions. The following is a list of those actions and the corresponding section of the local SUO that describes each. Corresponding sections from the NC model SUO are listed as well.

Notice of Violation	70-341(1)
Consent Orders	70-341(2)
Show Cause Hearing	70-341(3)
Administrative Orders	70-341(4)
Emergency Suspensions	70-341(5)
Termination of Permit	70-341(6)
Civil Penalties	70-343
Injunctive Relief	70-344(2)
Water Supply Severance	70-344(3)

In addition to the actions listed above, a User who violates the provisions of NCGS 143-215.6B may be referred by the Director to the District Attorney for possible criminal prosecution.

In determining the amount of civil penalties for a particular violation the Director shall consider the following factors (City of Durham SUO Section 70-343(b)):

1. The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation;
2. The duration and gravity of the violation;
3. The effect on ground or surface water quantity or quality or on air quality;
4. The cost of rectifying the damage;
5. The amount of money saved by noncompliance;
6. Whether the violation was committed willfully or intentionally;
7. The prior record of the violator in complying or failing to comply with the pretreatment program;
8. The costs of enforcement to the City of Durham.

Adjudicatory hearing procedures regarding permit decisions, civil penalties, and administrative orders may be found in the SUO Section 70-342.

3. Investigation of Noncompliance

Pretreatment Staff will generally investigate User compliance with permits or the provisions of the SUO in three ways:

1. On-site inspections of the User to include scheduled and unscheduled visits;
2. Scheduled and unscheduled sampling of the Users effluent;
3. Review of self-monitoring data, if required, from the User.

The compliance status of Significant Industrial Users will be evaluated at a minimum once every 6 months.

4. Types of Violations

The following is a list of different types of violations, by category. This list is not inclusive, but serves as a general list of anticipated types of noncompliance. The User's permit, local SUO, and State and Federal regulations serve as additional references for pretreatment requirements.

Unpermitted Discharges. Users are responsible for obtaining and renewing permits, if required.

Permit Limits. Users are responsible for maintaining compliance with all effluent limits. Pretreatment staff will evaluate the extent of the limits violation(s). In determining the extent of violation(s), Significant Non-Compliance (SNC) as defined by State and EPA regulations will be determined.

Self-Monitoring Violations. A User who fails to adequately conduct all the monitoring required in the permit, including monitoring frequencies and sampling methods specified, is in violation. This includes a User who does not resample as required by their permit when a permit limit violation occurs.

Reporting Violations. A User who fails to provide information (e.g. self monitoring reports) required in their Permit or the SUO in the required time frame is in violation. Late or incomplete reports will also be considered violations. A Significant Industrial User (SIU) who submits a report more than 30 days late is possibly considered in SNC.

Permit Conditions. Failure to apply or reapply for a permit is considered a violation. Users who violate the general or other conditions (e.g. slug loading, dilution prohibition) outlined in their permits or the SUO shall be considered to be in violation.

Enforcement Orders. Failure to meet the requirements of an order (e.g. interim limits, milestone dates), whether the order was entered into voluntarily or mandated by the POTW, shall be considered a violation. Missing a scheduled compliance milestone by more than 90 days is considered SNC.

5. Responses: Timeframes, Responsible Officials, Escalated Actions.

The attached chart further outlines types of violations and provides specific POTW actions (initial and escalated), timeframes, and identifies the officials responsible for completing the actions. This chart shall be considered a part of the Enforcement Response Plan.

Responses to violations affecting the operation of the POTW, resulting in POTW National Pollutant Discharge Elimination System (NPDES) violations, or resulting in environmental harm or endangerment to human health will be taken immediately or as soon as possible following discovery.

A User may be sent a Notice of Violation (NOV) or Notice of Noncompliance (NNC) for each individual violation. Alternatively, violations over a period of time may be summarized. In general, NOVs in response to violations will be issued within 30 days of discovery of the violations. Users found to be in SNC for two (2) consecutive 6 month periods will be issued an enforceable order to return to compliance. In all cases, escalated or continuing enforcement action will be taken against Users who do not return to compliance in a timely manner.

Cases of falsifying reports, tampering with monitoring or sampling equipment, or otherwise preventing the collection of representative data may be referred to the District Attorney for possible criminal investigation.

Show cause hearings may be held at the Director's discretion prior to taking enforcement actions.

UNPERMITTED DISCHARGES

Type of Violation	POTW Action	Timeframe	Responsible Official	Expected Action from User	Escalated Action if Needed
<i>Unpermitted Discharges</i>					
Unpermitted Discharge Unaware Of Requirement	Notice Of Violation	Within 30 Days Of Discovery Of Discharge	Pretreatment Coordinator	File Permit Application	Suspend Service Until Permit Is Issued
Unpermitted Discharge Aware Of Requirement	Notice Of Violation With Penalty Assessed	Within 30 Days Of Discovery Of Discharge	Director of Water Management	File Permit Application	Suspend Service Until Permit Is Issued
Unpermitted Discharge results in NPDES or other State issued permit or State General Statute violations	Order to Cease Process Causing Violation Notice of Violation with recommended minimum of \$1,000 and up to \$25,000/day per violation Penalty	Order to Cease Immediately Notice of Violation within 7 days	Director of Water Management	File Permit Application Steps Taken to avoid violation	Suspend Service Until Permit Issued
Unpermitted Discharge results in Endangerment	Suspend Service Notice of Violation with recommended minimum \$,1000 and up to \$25,000 per day per violation Penalty	Suspend Service Immediately Notice of Violation within 7 days	Director of Water Management	File Permit Application Steps Taken to avoid future endangerment	

NOTE: The Director of Water Management shall issue all penalties which are associated with violations of the Sewer Use Ordinance (SUO) and/or the Enforcement Response Plan (ERP).

PERMIT LIMITS VIOLATIONS

Type of Violation	POTW Action	Timeframe	Responsible Official	Expected Action from User	Escalated Action if Needed
<i>Permit Limits Violations</i>					
Permit Limits Violation Single Event Minor	Notice of Noncompliance or Notice of Violation with \$0 to \$25,000 Penalty	Within 30 days of receiving data	Pretreatment Coordinator or Director of Water Management	Conduct additional monitoring (if required) and Return to Compliance	Notice of Violation with Penalty
Permit Limits Violation Technical Review Criteria (TRC)	Notice of Violation with 0 to \$ 25,000 Penalty	Within 30 days of receiving data	Pretreatment Coordinator or Director of Water Management	Conduct additional monitoring (if required) and return to compliance	Second Notice of Violation with Increased Penalty
Permit Limits Violation Significant non-Compliance	Notice of Violation with 0 to \$ 25,000 Penalty	Within 30 days of Receiving all Data	Pretreatment Coordinator or Director of Water Management	Report cause of Non-compliance and steps taken to prevent violation	Enforceable Schedule (AO) if not resolved by end of 2 nd 6-month period
Permit Limits Violation results in NPDES or other State issued permit or State General Statute violations	Order to Cease process causing Violation Notice of Violation with recommended minimum \$ 1000 and up to \$ 25,000/ day per violation Penalty	Order to Cease Immediately Notice of Violation Within 7 days of Discovering Violation	Director of Water Management	Report cause of Non-compliance and steps taken to prevent violation	Suspend Service Until resolved Enforceable Schedule (AO) if not resolved by end of 2 nd 6-month period
Permit Limits Violation results in Endangerment	Suspend Service Notice of Violation with a recommended minimum \$1000 and up to \$25,000 per day per violation Penalty	Suspend Service Immediately Notice of Violation within 7 days	Director of Water Management	File for Reissuance of Permit	

OTHER VIOLATIONS

Type of Violation	POTW Action	Timeframe	Responsible Official	Expected Action from User	Escalated Action if Needed
<i>Other Violations</i>					
Failure to Provide Information by Due Date	Notice of Violation	Within 14 days of due date	Pretreatment Coordinator	Submit Requested Information	Second NOV with a penalty of \$1,000.
Self Monitoring Violations	Notice of Violation with a recommended Minimum Penalty Equal or Greater Than Cost of Missed Testing	Within 30 Days of Discovery	Pretreatment Coordinator	Conduct Missed Sampling	Second Notice of Violation with Penalty equal to Twice Cost of Missed Testing
Reporting Violations Late Report	Notice of Non-Compliance	Within 30 days of the Report Due Date	Pretreatment Coordinator	Submit Report	Notice of Violation Penalty Assessed Possible SNC if over 30 days
Reporting Violations Incomplete or Inaccurate Reports	Notice of Noncompliance	Within 30 days of Report Submission	Pretreatment Coordinator	Submit Revised Report	Notice of Violation Penalty Assessed
Reporting Violations Intentional Falsification	Referred to District Attorney	As soon as suspected	Director of Water Management		
Violation of Permit Conditions	Notice of Violation with Penalty up to \$25,000 per day per violation	Within 30 Days of Discovery	Pretreatment Coordinator or Director of Water Management	Varies	Second Notice of Violation with Increased Penalty
Violation of permit conditions results in NPDES or other State issued permit or State General Statute violations or Endangerment	Suspend Service Notice of Violation with up to \$25, 000 per day per violation Penalty	Suspend Service Immediately Notice of Violation Within 7 days	Director of Water Management	Steps taken to Violation of Permit Conditions Avoid Reoccurrence	

Type of Violation	POTW Action	Timeframe	Responsible Official	Expected Action from User	Escalated Action if Needed
<i>Other Violations (continued)</i>					
Violations of Enforcement Order Conditions or Limits	Notice of Violation assess Stipulated Penalty and Actions listed for same violation type in ERP	Within timeframe listed in Enforcement Order or For the Same Type of Violation in ERP	Pretreatment Coordinator or Director of Water Management	Additional Monitoring and Steps taken to avoid recurrence	Same as Escalated Action for Same Type of Violation Possible Revocation of Order
Failure to Meet a Milestone Date in an Enforcement Order (Does not Affect Other Dates)	Notice of Violation and Assess Penalty Stipulated in Order	Within 14 days of Discovery	Pretreatment Coordinator or Director of Water Management	Submit a schedule to complete the Requirement	Show Cause Hearing
Failure to Meet a Milestone Date in an Enforcement Order (Affects Other Dates)	Show Cause Hearing and Assess Stipulated Penalties	Within 30 days of Discovery	Director of Water Management	Negotiate new Order and Abide by New Conditions	Possible Termination of Service
Failure to Meet Final Compliance Date	Notice of Violation and Assess stipulated penalties	Within 14 days of Discovery	Director of Water Management	Document Compliance	Possible Termination of Service